

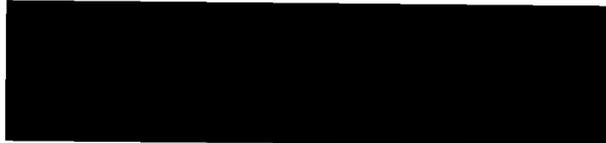
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 18 2012** OFFICE: PORTLAND, OR

FILE: 

IN RE: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Prior Immigration Violations under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

ON BEHALF OF APPLICANT:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Portland, Oregon denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II) as she is applying for adjustment of status following a removal under section 235(b)(1) of the Act. She seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States.

The Acting Field Office Director determined that the applicant did not meet the statutory requirements for an exception under section 212(a)(9)(C)(ii) of the Act and, accordingly, denied the Form I-212. *Decision of the Acting Field Office Director*, dated July 20, 2009.

On appeal, the applicant's former counsel contends that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act; and that the Acting Field Office Director erred as a matter of law for basing the denial of the form I-212 solely on the applicant's physical presence in the United States at the time of application. *Counsel's brief*, dated September 17, 2009.

Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

....

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

On November 29, 1999, the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act for attempting to enter the United States with a Resident Alien Card that did not belong to her and was, thereafter, barred from entering the United States for five years. *Form I-860, Notice and Order of Expedited Removal*, dated November 29, 1999; *Form I-213, Record of Deportable/Inadmissible Alien*, dated November 29, 1999; *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated November 29, 1999. On November 25, 2007, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved immigrant petition that was filed on her behalf by her husband. On this form, the applicant indicated that her last arrival to the United States was on or about March 20, 2000 and that she had entered the United States without inspection. The record, however, establishes that the applicant had also entered the United States without inspection on May 3, 2000 and she was allowed to voluntarily return to Mexico.

In her brief, counsel makes two assertions. She first contends that the applicant's removal by an immigration officer under section 235(b)(1) of the Act does not satisfy the first prong of the test to determine whether she is subject to section 212(a)(9)(C)(i)(II) of the Act. Counsel asserts that the applicant cannot be considered to have been ordered removed as she was not ordered removed by an immigration judge. While we note counsel's assertion, we do not find it persuasive. The statutory language of section 212(a)(9)(C)(i) specifically references section 235(b)(1) and the language of section 235(b)(1) authorizes an immigration officer to order the removal of an inadmissible alien. We find that this language to clearly indicate that an individual ordered removed by an immigration officer under section 235(b)(1) has been ordered removed for the purposes of section 212(a)(9)(C)(i)(II) of the Act. Counsel fails to offer any legal authority that would support another reading of the statutory language we have just discussed.

In support of her second assertion that physical presence in the United States is not a bar to receiving permission to reapply for admission, counsel cites *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). While the AAO agrees that physical presence in the United States does not prevent an applicant from benefitting from a Form I-212, the issue in the present case is not the applicant's physical presence in the United States but the fact that she did not reside outside the United States for 10 years prior to filing the Form I-212. The Board of Immigration Appeals (BIA) clearly states that an alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless that alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Id.*

The AAO finds the applicant to be inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and subsequently reentering the United States without being admitted. In that the record in the present matter does not establish that the applicant has resided outside the United States for the required 10 years, she is not eligible to apply for the exception provided in section 212(a)(9)(C)(ii) of the Act.

In proceedings to obtain an exception under section 212(a)(9)(C)(ii) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.